

**RESOLUTION NO. 2012-33a**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING THE PROPOSAL OF ATKINS NORTH AMERICA, INC. FOR EMERGENCY INSPECTIONS AND BUILDING PERMIT PLAN REVIEW; AUTHORIZING THE VILLAGE MANAGER AND OTHERS TO NEGOTIATE FINAL TERMS FOR SUCH SERVICES AND ENTER INTO AN AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne, Florida (the "Village") issued a Request for Proposals (RFP) in order to solicit through a competitive procurement process professional services for inspections and building plan review following a natural or man-made disaster ("Services"); and

**WHEREAS**, Atkins North America, Inc. ("Firm") submitted a proposal in response to the RFP and after review of the proposal submitted, the Village wishes to select the proposal of the Firm to provide the Services; and

**WHEREAS**, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1.**      **Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2.**      **Selection of Firm.** The Village Council hereby selects the proposal of the Firm to provide the Services, based on the fee schedule included in the proposal, a copy of which is attached as Exhibit "A" to this Resolution.


**Section 3.**      **Village Manager and Attorney Authorized.** The Village Manager is hereby authorized to negotiate with the Firm the final terms of an agreement for the provision of the Services,

consistent with the Proposal attached as Exhibit "A, and to execute an Agreement with the Firm acceptable in form and substance to the Village Attorney. The Village Attorney is hereby authorized to prepare an agreement and to do all other things necessary to accomplish the completion of an agreement.


**Section 4.**      **Implementation.** That the Village Manager is hereby authorized to take any and all action which is necessary to implement the proposal and an agreement for the Services and the purposes of this Resolution.

**Section 5.**      **Effective Date.** This Resolution shall be effective immediately upon adoption.


PASSED AND ADOPTED this 28th day of August, 2012.

  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

  
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
VILLAGE ATTORNEY



**AGREEMENT  
BETWEEN  
THE VILLAGE OF KEY BISCAYNE  
AND  
ATKINS NORTH AMERICA, INC.**

*November* **THIS AGREEMENT** (this "Agreement") is made effective as of the 08th day of November 2012 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (hereinafter the "Village"), and **ATKINS NORTH AMERICA, INC.**, a Florida corporation (hereinafter the "Contractor"), with its address at 2001 Northwest 107<sup>th</sup> Avenue, Miami, Florida 33172-2507.

**WHEREAS**, on May 31, 2012, the Village issued a Request for Proposals ("RFP") seeking professional services for the review of building plans and inspection services immediately following a significant natural or man-made disaster impacting the Village;

**WHEREAS**, the RFP resulted in the Contractor submitting a proposal to the Village, which proposal is dated June 22, 2012 is incorporated herein by reference (the "Proposal");

**WHEREAS**, the Village selected the Contractor for the requested services, and the Village desires to enter into an agreement with the Contractor for the services described in this Agreement, and the Contractor has agreed to provide such services pursuant to its Proposal; and

**WHEREAS**, the Contractor and the Village, through mutual negotiation, have agreed upon a Scope of Services, schedule, and fee to engage the Contractor to perform certain services for the Village consisting of structural, building, electrical, plumbing, roofing, mechanical, zoning, and code enforcement services as further detailed in the Scope of Services set forth herein below, including any necessary review of plans pursuant to the Florida Building Code, upon request by the Village.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Village agree as follows.

1. **Scope of Services.**

- 1.1. The Contractor shall furnish such services and provide deliverables as required and requested by the Village's Director of Building, Zoning and Planning Department or his designee, in accordance with the terms, specifications and conditions set forth in the RFP, the Proposal and this Agreement, which shall include but are not limited to the following: review of building plans, zoning plan review and code compliance services and processing of plans; administer the Florida Building Code and all applicable building codes and regulations, including Village codes and ordinances; provide inspection services and clerk functions; code enforcement services; provide plans reviewers, building code inspectors,

project managers, building officials and code administrators; and Federal Emergency Management Agency (“FEMA”) support and documentation (collectively, the “Services”).

The Scope of Services itemized above is not intended to be limiting, and additional Services may be required of the Contractor as directed by the Director of the Building, Zoning, and Planning Department or his designee.

The Contractor shall utilize its skills and shall competently and professionally perform and complete the Services in a successful, timely and safe manner. The Contractor shall provide all necessary materials, equipment, personnel and services for the timely performance of the Services. Notwithstanding anything to contrary in this Agreement, in performing the Services under this Agreement, the Contractor shall perform the Services to the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by the Contractor.

At the request of the Director of the Building, Zoning and Planning Department, the Contractor and all personnel providing Services pursuant to this Agreement shall meet with the Director and appropriate Village staff to address and review procedures and receive training on the Village’s building permit tracking system software.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect on a month-to-month basis, unless earlier terminated in accordance with Paragraph 8. The Director of the Building, Zoning, and Planning Department or his designee may extend the term of this Agreement up to an additional ninety (90) days by written notice to the Contractor.
- 2.2 The Contractor acknowledges and agrees that the Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Services required under this Agreement. The Contractor shall perform and complete the Services within the timeframes set forth by the Director of the Building, Zoning, and Planning Department or his designee and as requested by the Village, unless an extension is granted by the Director of the Building, Zoning, and Planning Department or his designee.

3. **Compensation and Payment.**

- 3.1 The Contractor shall be paid for the Services on an hourly basis in accordance with the Fees and Schedule of Hourly Rates set forth in Exhibit "A" attached hereto and made a part hereof. All hourly rates and fees charge shall be supported by a complete accounting of said hours.
- 3.2 In order to receive payment for the Contractor's Services, the Contractor must provide a detailed invoice, on a monthly basis, that contains a list of the Services that have been provided. The Contractor may be required to use a form that is acceptable to the Federal Emergency Management Agency ("FEMA").
- 3.3 The Contractor shall pay all of its own expenses incurred in performing the Services. OR

The Contractor shall be reimbursed by the Village for necessary and direct costs including copying, plan reproduction costs requested by the Village, long distance telephone calls, federal express or courier services, as approved by the Director of the Building, Zoning, and Planning Department or his designee.

- 3.4 Invoices shall be promptly processed for payment upon receipt by the Village pursuant to Sec. 218.70, Fla. Stat, the Florida Prompt Payment Act, after approval and acceptance of the Services by the Director of the Building, Zoning, and Planning Department or his designee.

4. **Subcontractors.**

- 4.1 The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services performed.
- 4.2 Any subcontractors used to complete the Services requested by the Village pursuant to this Agreement, must have the prior written approval of the Director of the Building, Zoning and Planning Department or his designee.

5. **Village's Responsibilities.**

- 5.1 The Village shall furnish to the Contractor, at the Contractor's written request, all available data in possession of the Village, pertinent to the Services to be provided by the Contractor.
- 5.2 The Village shall arrange for access to and make all provisions for the Contractor to enter upon real property, as required for the Contractor to perform the Services, as may be requested in writing by the Contractor.

6. **Contractor's Responsibilities.**

- 6.1 The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services requested as is ordinarily provided by a Contractor under similar circumstances. If at any time during the term of this Agreement it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Services requested, upon written notification from the Director of the Building, Zoning and Planning Department or his designee, the Contractor shall, at Contractor's sole expense, immediately correct the work.
- 6.2 The Contractor shall supply all information and documentation required to support the Village in the Federal programs reimbursement process, as mandated by FEMA. Further, the Contractor shall otherwise comply with any and all requirements for federal reimbursement, and all applicable federal and State laws

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, the Contractor shall not, for the term of this Agreement after Contractor has commenced performing Services under this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial issues in the Village where Contractor was involved in performing Services for the Village under this Agreement. For the purposes of this section "adversarial" shall include any development application where staff is recommending denial or has already denied the application; or in cases involving an administrative appeal or court action wherein the Village is a party.

8. **Termination.**

- 8.1 The Director of the Building, Zoning and Planning Department or his designee may terminate this Agreement without cause upon five (5) days written notice to the Contractor, or immediately with cause.
- 8.2 Upon receipt of the Village's written notice of termination, the Contractor shall cease working unless directed otherwise by the Director of the Building, Zoning and Planning Department or his designee.
- 8.3 In the event of termination by the Village, the Contractor shall be paid for all work accepted by the Director of Building, Planning and Zoning Department or his designee up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4.

- 8.4 The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services provided to the Village, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Nondiscrimination.**

- 9.1 During the term of this Agreement, the Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and shall abide by all Federal and State laws regarding nondiscrimination

10. **Attorneys' Fees and Waiver of Jury Trial.**

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification; Insurance.**

- 11.1 The Contractor shall indemnify, and hold harmless the Village, its officers, agents and employees, from and against, losses, suits, liabilities, causes of action, judgment or damages, to the extent caused by the negligent performance of the Contractor's Services pursuant to this Agreement, and the performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement, and intellectual property rights of third parties. The Contractor shall reimburse the Village for its reasonable expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such event and for any judgment or damages to the extent caused by the Contractor's Services and the performance or non-performance of this Agreement.
- 11.2 The Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Village against hazards or risks of loss, as specified below. The underwriter of such insurance shall be

qualified to do business in Florida, be rated "A-X" or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 11.

- 11.3 **Professional Liability Insurance.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Village against claims arising from professional liability and malpractice arising out of any act or omission or the act or omission of any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00.
- 11.4 **Worker's Compensation and Employer's Liability Insurance.** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- 11.5 **Comprehensive Automobile and Vehicle Liability Insurance.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Village against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.
- 11.6 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Village against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest



edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

- 11.7 **Certificate of Insurance.** On or before the Effective Date of this Agreement, the Contractor shall provide the Village with Certificates of Insurance for all required policies. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.
- 11.8 **Additional Insured.** Excluding with respect to professional liability insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 11.9 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- 11.10 The provisions of this section shall survive termination of this Agreement.

12. **Notices/Authorized Representatives.**

- 12.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: Director, Building, Zoning, and Planning  
Department  
Village of Key Biscayne, Florida  
88 W. McIntyre Street  
Key Biscayne, FL 33149  
Telephone: 305-365-8908  
Fax Number: 305-365-5556

For The Contractor: Atkins North America, Inc.  
Attention: David J. Carter, CCM, Senior Vice  
President  
2001 Northwest 107<sup>th</sup> Avenue  
Miami, Florida 33172-2507  
Telephone: (305) 592-7275  
Fax Number: (305) 594-8616

13. **Governing Law.**

- 13.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

14. **Entire Agreement; Amendment; Authorization.**

- 14.1 This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless such amendment is executed with the same formality as this document.
- 14.3 The Contractor represents that it is an entity validly existing and in good standing under the laws of the State of Florida. The execution, delivery and performance of this Agreement by the Contractor has been duly authorized, and this Agreement is binding on the Contractor and enforceable against the Contractor in accordance with its terms. No

consent or authorization of any other person or entity to such execution, delivery and performance is required.

15. **Ownership and Access to Records and Audits.**

- 15.1 Upon payment due to the Contractor, all records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing the Services to the Village under this Agreement shall be the property of the Village.
- 15.2 The Director of the Building, Zoning and Planning Department or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Contractor involving transactions related to this Agreement, or for such longer period as required by FEMA.
- 15.3 The Village may cancel and terminate this Agreement immediately for refusal by the Contractor to allow access by the Director of the Building, Zoning and Planning Department or his designee to any Records pertaining to the Services performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

16. **Nonassignability.**

- 16.1 This Agreement shall not be assignable by the Contractor unless such assignment is first approved in writing by the Director of the Building, Zoning and Planning Department or his designee, in its sole and absolute discretion. The Village, in entering this Agreement, is relying upon the apparent qualifications and personal expertise of the Contractor, and his firm's familiarity with the Village and the Village's desires.

17. **Severability.**

- 17.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

- 18.1 The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the Village with respect to all of the acts and Services performed pursuant to the terms of this Agreement. This Agreement shall not in any way be construed to

create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

19.1 The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Services provided, including any applicable FEMA requirements and/or regulations.

20. **Waiver.**

20.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Survival of Provisions.**

21.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, and shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Prohibition of Contingency Fees.**

22.1 The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts.**

23.1 This Agreement may be executed in several counterparts, each of which shall be deemed original and such counterparts shall constitute one and the same instrument.

24. **Safety; Accident Prevention and Regulations.**

24.1 Precautions shall be exercised at all times for the protection of persons and property. The Contractor and subcontractors shall conform to all applicable OSHA, Federal, State, County and Village laws and regulations

while performing the Services under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities, because of failure or inadequacies to comply with these requirements, shall be borne solely by the Contractor who shall be responsible for same.

25. **Required Licenses, Permits and Certifications; Representations of Contractor.**

25.1 The Contractor represents to the Village that at all times during the term of this Agreement it shall procure and maintain in good standing all required licenses, permits, certifications and insurance required under federal, state and local laws necessary to perform the Services pursuant to this Agreement. Any fines levied by the above-mentioned authorities, because of failure or inadequacies to comply with these requirements, shall be borne solely by the Contractor who shall be responsible for same.

25.2 Within fourteen (14) days of the Effective Date of this Agreement and at all times during the term of this Agreement, all inspectors providing Services pursuant to this Agreement, including but not limited to the Chief Mechanical Inspector, Chief Plumbing Inspector, Chief Electrical Inspector, Chief Structural Inspector, Chief Building Official and Chief Roofing Inspector, shall be certified and licensed by both the State of Florida and the Miami-Dade County Board of Rules and Appeals, and procure and maintain all licenses and certifications required by such entities and applicable law. In addition, all other inspectors, including but not limited to electrical inspectors, building inspectors, plumbing inspectors, structural inspectors, roofing inspectors and mechanical inspectors, shall have all licenses and certifications required by Miami-Dade County Regulations and applicable law.

26. **Public Entity Crime Affidavit**

26.1 The Contractor shall comply with Section 287.133, Florida Statutes (Public Entities Crime Statute), notification of which is hereby incorporated herein by reference, including the execution of any required affidavit.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the first date as written above.

Attest:

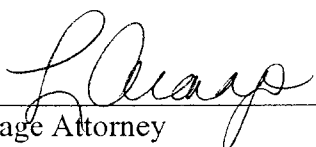
  
Conchita H. Alvarez, MMC, Village Clerk

VILLAGE OF KEY BISCAYNE

By:   
John C. Gilbert, Village Manager

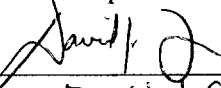
Date: 11/5/12

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF VILLAGE OF  
KEY BISCAYNE ONLY:

  
Village Attorney

CONTRACTOR:

ATKINS NORTH AMERICA, INC.,  
a Florida corporation

By:   
Name: David J. Carter  
Title: Sr. Vice President

Date: 11/1/2012

## **EXHIBIT “A”**

### **FEES AND SCHEDULE OF HOURLY RATES**

<b><u>POSITION</u></b>	<b><u>HOURLY RATE</u></b>
Building Official, Project Manager, and Code Administrator	\$94.23
Plans Examiner (Building, Electrical, Mechanical, and Plumbing)	\$85.48
Plans Examiner (Structural)	\$88.34
Inspector	\$73.27
Roofing Inspector	\$79.38